INTERIOR RESERVES CORP. ET AL.

IBLA 88-296 Decided September 5, 1990

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, vacating approval of assignment, approving partial assignment, and returning unapproved partial assignments of oil and gas lease W-87505.

Affirmed in part, reversed and remanded in part, as to the first decision; affirmed as to the second decision.

1. Oil and Gas Leases: Assignments and Transfers--Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

   A noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law upon failure of a lessee to pay the full amount of the rental due on or before the anniversary date of the lease. However, a partial assignment of record title to acreage in a Federal oil and gas lease, filed by a qualified assignee prior to the lease anniversary date, may be approved where the annual rental for the segregated acreage in the assignment was tendered prior to the anniversary date, even though the base lease terminated for nonpayment of the full lease rental on the anniversary date of the lease.

2. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Rentals

   In the absence of a clear indication that it is intended for the preservation of a specific parcel or parcels, a partial payment of rental should be attributed to the leasehold generally. Such partial payment by an unapproved assignor may not be used to preserve the interests of parcels held by unapproved assignees in the absence of a clear indication that it was intended to be used to do so.

3. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Rental--Oil and Gas Leases: Termination

   An unapproved assignor may not rely on BLM's approval of the assignment prior to the anniversary date in determining whether to submit rental for the entire

leasehold. That is, where the assignor apparently submits less than full rental in the expectation that BLM would approve a pending assignment prior to the anniversary date (thereby reducing the rental due to be paid) he bears the risk that the assignment will not be approved prior to the anniversary date and that less than the full amount will be timely paid by the assignor and assignees.

4. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Rental--Oil and Gas Leases: Termination

Where the assignment of an oil and gas lease is pending before BLM, the assignor remains responsible for the performance of all obligations under the lease until the assignment has been approved, and BLM's failure to approve an assignment by the date the rental is due does not obviate the requirement the rental for the entire leasehold be paid on or before the anniversary date of the lease. The obligation to pay annual rental exists without regard to the fact that assignments of lease interests are pending, even though the assignments may ultimately be made effective retroactively to a date prior to the anniversary date.

5. Oil and Gas Leases: Assignments or Transfers--Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Where the record titleholder of an oil and gas lease fails to request reinstatement within the time allowed, reinstatement is not authorized under governing statutory and regulatory provisions, and the termination of the lease becomes final. BLM must refuse to approve any pending assignments, as there is no lease interest left to be assigned.

APPEARANCES: Ted J. Gengler, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Interior Reserves Corporation (Interior Reserves) and other unapproved assignees appeal from two decisions of the Wyoming State Office, Bureau of Land Management (BLM), both issued on February 17, 1988, affecting Federal oil and gas lease W-87505. 1/

1/ The other unapproved assignees who have appealed are International Metals Trading Group, Gordon D. Livingston, Claire N. Sohl, John S. Visser, Dorothy M. Clark, Robert and Janet Boyden, Marie M. Edgmon, and Charlie Hinson.

Effective June 1, 1984, BLM issued lease W-87505 to LaVerne S. Mellen for 1,697.93 acres in Weston County, Wyoming. Mellen assigned 100 percent of record title in the lease to Interior Reserves on May 23, 1986. This assignment was filed with BLM on November 7, 1986, but was not immediately approved or rejected by BLM. While approval of this assignment was pending, Interior Reserves made 13 partial assignments of interests in the lease to individuals. 2/ These assignments were filed for approval with BLM in November and December 1986. As with the assignment from Mellen to Interior Reserves, BLM took no immediate action to approve or deny these assignments.

By notice dated July 31, 1987, BLM informed Mellen, the lessee of record, that the lease had terminated automatically by operation of law for failure to pay full rental on or before June 1, 1987, the anniversary date of the lease. BLM noted that the rental that had been received at that time was short by $338. BLM's notice informed appellant of the right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and 30 U.S.C. § 188(d) (1982) (class II reinstatement). The notice set forth the conditions for reinstatement under both class I and class II procedures. No petition for reinstatement was filed.

On November 19, 1987, despite the fact that it had regarded the lease as terminated, BLM purportedly approved the assignment from Mellen to Interior Reserves and 12 of the 13 assignments from Interior Reserves to individuals. 3/

On December 11, 1987, BLM received for approval another assignment from Interior Reserves to International Metals Trading Group (International Metals) conveying 520 acres of land in the lease. On January 19, 1988, BLM

2/ Some of these 12 partial assignments were to one individual; others were to groups of two individuals. See note 3, below.

3/ Twelve assignments from Interior Reserves to the following named parties were approved (the segregated leases designated by their serial numbers and acreage are shown in parentheses): Joseph W. and Bonnie McCampbell (W-87505-B, 40 acres); Patrick Mitchell and Irene Donoghue (W-87505-C, 40 acres); Helen D. Struck (W-87505-D, 40 acres); Frances I. Gravot (W-87505-E, 35.45 acres); Delbert E. Cobleigh (W-87505-F, 40 acres); Arthur W. Harsch (W-87505-G, 80 acres); George and Virginia Steutermann (W-87505-H, 120 acres); Mark D. Sisterhen (W-87505-I, 75.64 acres); Gladys W. Bieri (W-87505-J, 80 acres); Jean E. Fraser (W-87505-K, 40 acres); Jane S. and Michael J. McCampbell (W-87505-L, 40 acres); and Kathryn H. Briggs (W-87505-M, 40 acres). It also appears that BLM assigned entirely new serial numbers to these lease interests, but we are unable to determine which number applies to which lease.

The assignment of an additional 120 acres from Interior Reserves to Corinne Howard, Trustee, was not approved because the request for approval of assignment was not accompanied by a filing fee.

Thus, Interior Reserves attempted to assign out a total of 791.09 acres, leaving it with 906.94 acres retained in the lease.

received seven small-acreage partial assignments conveying all the interest in those 520 acres of the lease from International Metals to various individuals. 4/

In its first decision issued on February 17, 1988, BLM noted that, in accordance with 43 CFR 3108.2-1, the lease had terminated effective June 1, 1987, for failure to pay rental in a timely manner. BLM explained that the amount of the rental due on June 1, 1987, on the lease was $1,698, but that only $1,360 was timely received. BLM concluded that, since the lease had terminated and the time for reinstatement had passed, the assignment conveying all the lands in the lease from Mellen to Interior Reserves had therefore been erroneously approved on November 19, 1987. Accordingly, it vacated the approval of that assignment.

However, BLM did not disturb the 12 partial assignments of interests from Interior Reserves to the individuals named above (see note 3). It noted that, under governing Departmental precedent, requests for partial assignments which are filed prior to the date of termination of a lease may not be denied if rental attributable to the partial assignment has been paid prior to the anniversary date of the lease. BLM explained that the assignment from Mellen to Interior Reserves had been approved in November 1987 only as a formality to preserve the integrity of the chain of title so that the lands which had complete assignments and timely rentals could be "filtered through" Interior Reserves. Therefore, after vacating the assignment in toto by its decision, BLM proceeded to approve the assignment from Mellen to Interior Reserves in part, insofar as it concerned the lands described in the 12 partial assignments. The lands conveyed by these assignments totaled 671.09 acres.

Also on February 17, 1988, BLM issued its second decision, denying the assignment of 520 acres in the lease from Interior Reserves to International Metals, and the seven assignments from International Metals to various individuals. BLM ruled that it could not approve assignments of interests in the lease, since it had terminated by operation of law on June 1, 1987.

The casefile contains the lease payment records for the lease compiled by the Minerals Management Service's (MMS) Bonus and Rental Accounting Support System. This information is critical in determining what interests in the lease could properly be preserved. It reveals that the following individuals timely paid rental on the acreage covered by the unapproved assignments that were pending as of the anniversary date of the lease, that is, June 1, 1987: Jane S. and Michael McCampbell, Patrick Mitchell and Irene Donoghue, Helen D. Struck, Frances I. Gravot, Delbert E. Cobleigh, and Arthur W. Harsch. This information discloses that the following individuals submitted rental payments for their unapproved assignments, but that they were untimely: Mary D. Sisterhen, Gladys W. Bieri, Jean E. Fraser,

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4/ The seven assignees were Gordon D. Livingston, Claire N. Sohl, John S. Visser, Dorothy M. Clark, Robert and Janet Boyden, Marie M. Edgmon, and Charlie Hinson, all of whom have appeared as appellants.

Kathryn H. Briggs, and Joseph W. and Bonnie McCampbell. 5/ This information indicates that no rental was submitted for George and Virginia Steutermann.

Additionally, there is in the record a copy of a check from Interior Reserves to MMS for $1,040 with the notation "Partial Payment on Leases W-87505/04." 6/ This check was filed with MMS prior to the anniversary date of the lease, June 1, 1987. No attempt was made to identify this partial payment as relating to any specific acreage.

[1] The general rule is that under 30 U.S.C. § 188(b) (1982) a noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by opera-tion of law upon failure of a lessee to pay the full amount of the rental due on or before the anniversary date of the lease. Louise V. Lee, 83 IBLA 50 (1984). However, an exception to this rule is found in Ladd Petroleum Corp., 70 IBLA 313 (1983), holding that a partial assignment of record title to acreage in a Federal oil and gas lease, filed by a qualified assignee prior to the lease anniversary date, may be approved after the anniversary date where the annual rental for the segregated acreage in the assignment was tendered prior to the anniversary date, even though the base lease terminates for nonpayment of the full lease rental on the anniversary date of the lease. Accord Russell Sinclair Grove, Jr., 94 IBLA 254 (1986) (applying this principle to each assignment in a chain of unapproved assignments pending on the anniversary date).

Therefore, under the Ladd and Grove decisions, the lease did not terminate as to those assigned portions of the lease for which the assignees submitted rental prior to the anniversary date of the lease. The lease did terminate as to those assigned portions of the lease for which no rental payment was submitted prior to the anniversary date of the lease.

It is evident that BLM improperly preserved the interests of six of the partial assignees. The information in the file shows that only six
assignees made timely rental payments. However, BLM approved 12 assignments, implying that rental from all of these assignees had been timely submitted. A worksheet in the casefile listing the assignees and the dates and amount of their rental payments demonstrates that BLM applied funds timely submitted by Interior Reserves toward these six partial assignments, as though these funds had been submitted for their benefit. 7/

5/ Corrine Howard, whose assignment was not approved, also submitted untimely rental.

6/ We are unable to determine the significance, if any, of the inclusion of the "/04" at the end of this serial number. In the absence of any explanation from Interior Reserves, we presume that this check was intended to cover only lease W-87505.

7/ Five of these assignees, named above, paid 1987 rental untimely. BLM applied Interior Reserves' timely $1,040 partial payment as rental timely filed for these persons. It appears from a second worksheet in the record

[2] We do not condone BLM's use of the timely partial rental submitted by Interior Reserves for the benefit of the individual assignees who did not make timely payments for their parcels. In the absence of a clear indication that it is intended for the preservation of a specific parcel or parcels, a payment of rental should be attributed to the leasehold generally. 8/ Of course, such payment, when combined with rental payments that are identified as being for specific parcels, is relevant in determining whether the entire annual rental on the whole lease has been timely submitted. However, we perceive no justification here for BLM's decision to attribute Interior Reserves' timely partial payment to the benefit of individual parcels.

In the absence of timely payment of rental for the partial assignments, there was no basis in law for BLM to preserve them. Therefore, BLM's decisions are reversed to the extent that they preserved those assigned portions of the lease for which payment was untimely or never submitted.

[3] The question remains whether Interior Reserves' interest in the base lease was preserved by its timely submission of partial rental. We hold that it was not.

Section 31(b) of the Mineral Leasing Act, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease will "automatically terminate by operation of law" where the lessee fails to pay the annual rental on or before the lease anniversary date and there is no well capable of producing oil or gas in paying quantities. Seth Swift, 109 IBLA 270 (1989); Ann L. Rose, 92 IBLA 308 (1986). Apart from the limited rule announced in Ladd, termi-nation of a lease for insufficient rental is mandatory. There is no dispute that full rental was not timely paid on or before the anniversary date of the lease. Accordingly, it terminated by operation of law, except to the extent preserved by the partial payments, described above.

It appears that Interior Reserves may have been relying on the assignees to submit the rental for their respective acreage. 9/ However, a lessee may not rely on BLM's approval of the assignment prior to the anniversary date. See Harry C. Peterson, 75 IBLA 195, 196-97 (1983);

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fn. 7 (continued)
that BLM then applied the untimely 1987 rental submitted by these five persons as a credit against their 1988 annual rental.

8/ For example, On June 15, 1987, Interior Reserves did submit checks (albeit untimely) expressly designated as being for the benefit of lands assigned to Mary Sisterhen, Gladys Bieri, and Joseph and Bonnie McCampbell.

9/ Interior Reserves submitted $1,040 in rental prior to the anniversary date of the lease. This amount does not correspond to the acreage Interior Reserves retained in the lease after the 13 assignments (906.84 acres). Nor does it correspond to the amount of rental due for the 13 partial assignments (791.09 acres). We have no way of ascertaining the basis for this partial payment.

Reichhold Energy Corp., 40 IBLA 134 (1979), aff'd, Reichhold Energy Corp. v. Andrus, Civ. No. 79-1274 (D.D.C. Apr. 30, 1980). That is, where the assignor submits less than full rental in the expectation that BLM will approve a pending assignment prior to the anniversary date, thereby reducing the rental due to be paid, he bears the risk that the assignment will not be approved prior to the anniversary date and that less than the full amount will be timely paid by the assignor and assignees.

[4] It is well established that, where the assignment of an oil and gas lease is pending before BLM, the assignor remains responsible for the performance of all obligations under the lease until the assignment has been approved, and that BLM's failure to approve an assignment by the date the rental is due does not obviate the need to pay all of the rental due on or before the anniversary date of the lease. 30 U.S.C. § 187a (1982); Jerry D. Powers, 85 IBLA 116 (1985). The lessee of record during the period in question was LaVerne Mellen. The Board has recognized that complicated private arrangements governing ownership of oil and gas leases are very common, and that it is not unusual or improper that someone other than the lessee of record should pay the annual rental under such an arrangement. Nola Grace Ptasynski, 82 IBLA 48, 54 (1984); Pyro Energy Corp., 69 IBLA 327, 331 (1982). Thus, if Interior Reserves (or any other party) had wanted to ensure that the lease would not terminate, it could have submitted the payment of the entire rental, subject to refund if an overpayment resulted.

Appellants contend that because not less than 671.09 acres were eventually assigned out of the lease, the annual rental for the base lease could be no more than $1,027, representing $1 per acre or fraction of an acre for the balance of the lease (1,026.84 acres) remaining after the 12 approved assignments. Appellants, stressing that the effective date of approval of the assignments actually predated the anniversary date, argue that Interior Reserves' payment of $1,040 was adequate to cover the remaining acreage in the lease.

We do not accept appellants' construction that the effective date of the assignment retroactively governs the rental obligations of the lease. It is established that the obligation to pay annual rental exists without regard to the fact that assignments of lease interests are pending, even though the assignments may be made effective retroactively to a date prior to the anniversary date. NP Energy Corp., 72 IBLA 34, 37 (1984). At the time the rental was due, BLM had not yet approved any of the assignments. Thus, rental for the entire leasehold, totalling $1,698, was due. When the full rental was not timely paid, the lease automatically terminated, excepting only those prospective assignees who had timely paid rental fully covering the interests they expected to receive in the lease.

We are aware that, aggregating the timely partial payments by Interior Reserves and the prospective assignees with the untimely payments by the prospective assignees, the required rental was in fact received within 20 days after the due date. In certain circumstances, leases may be rein-stated where the full rental is submitted within 20 days of the anniversary date. Unfortunately, it is established that the right to petition for

reinstatement is personal to the record titleholder of the lease. See Howard H. Vinson, 90 IBLA 280, 285 (1986). Mellen, the record titleholder, elected not to pursue such relief, and the time for so requesting has long since passed. As discussed below, if the time for reinstatement passes without the lease being reinstated, the termination becomes final.

[5] We shall next consider the assignments which BLM returned unapproved by its second decision of February 17, 1988. These assignments included an assignment of 520 acres from Interior Reserves to International Metals filed with BLM on December 10, 1987, and seven small-acreage partial assignments in turn conveying all the interest in the same 520 acres from International Metals to various individuals filed with BLM on January 19, 1988.

As previously discussed, the lease terminated by operation of law on June 1, 1987, the anniversary date of the lease, for failure to timely pay the full amount of the rental. Under Ladd, the lease did not terminate as to those portions of the lease for which an assignment was pending on the anniversary date and rental had been paid for the assigned portion. However, Ladd is not applicable to the assignments from Interior Reserves to International and from International to the seven sub-assignees, because these assignments were filed with BLM after the lease terminated. Where the record titleholder fails to request reinstatement within the time allowed, reinstatement is not authorized under governing statutory and regulatory provisions, and the termination of the lease becomes final. In these circumstances, BLM must refuse to approve any pending assignments as there is no lease interest left to be assigned. See James Darby, 92 IBLA 231 (1986); Howard H. Vinson, supra. BLM properly returned these assignments unapproved.

On remand, BLM is directed to cancel any leases held by the six assignees who did not timely submit rental for their parcels, and to refund to Interior Reserves its partial rental payment of $1,040.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, BLM's first decision is affirmed in part, and reversed and remanded in part. BLM's second decision is affirmed.

David L. Hughes
Administrative Judge

I concur:

John H. Kelly
Administrative Judge